

INTERNAL REVENUE SERVICE
Director Exempt Organizations
c/ McCaslin Industrial Park
2 Cupania Circle
Monterey Park, CA 91755

Department of the Treasury
Pacific Coast Area (TE/GE)

Date:

JUL 19 2000

Employer Identification Number:
[REDACTED]

Case Number:
[REDACTED]

Person To Contact:
[REDACTED]

Telephone Number:
[REDACTED]

(FAX)

Refer Reply To:
[REDACTED]

Dear Applicant:

We have considered your application for exemption from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code. Based on the information submitted, we have concluded that you do not qualify for exemption under IRC 501(c)(3).

FACTS:

The information submitted discloses that you were formed under [REDACTED]. The purpose of the organization, as stated on attachment to page 2 of Form 1023, is to further the economic development purposes of the redevelopment agency and to maintain recreational facilities of the City [REDACTED].

The activities of this organization include the following:

- (1) To assume certain responsibilities related to the operation and development of [REDACTED].
- (2) To maintain and operate a restaurant located in the clubhouse.
- (3) To hold an alcoholic beverage license and serve alcoholic beverages.

ISSUE:

Does the organization qualify for exemption from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code?

LAW:

Section 501(c)(3) of the Code provides for the exemption of corporation and foundations organized and operated exclusively for charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholders or individuals.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides the term "charitable" is used in section 501(c)(3) of Code in its generally accepted legal sense, and includes lessening the burdens of government.

Revenue Ruling 85-2, 1985-1 C.B. 178, states that a determination of whether an organization is lessening the burdens of government requires consideration of whether the organization's activities are activities that a governmental unit considers to be its burdens, and whether such activities actually "lessen" such governmental burdens.

GCM#38693 addresses a development authority that is organized by private persons with the approval of a political subdivision of a state, is thereafter controlled by the political subdivision, and is authorized to borrow money to provide business facilities to private interests in hopes of increasing employment. The GCM concluded that the development authority did not operate to lessen the burdens of government, because it appeared that the local government was prohibited from making expenditures for the purpose for which the authority will expend money. Since the government itself could not conduct the activity, the development authority could not claim to be lessening the burdens of government.

ANALYSIS:

Your organization was formed in order to assume certain responsibilities related to the operation and development of the [REDACTED] (a golf course), including the operation of a restaurant serving alcoholic beverages. The restaurant is an integral part to both the [REDACTED] and to the economic development of the golf course.

[REDACTED], [REDACTED] at [REDACTED] states that "It is the intent of the City is to sell alcoholic beverages from the [REDACTED]. However, state law does not permit a city to receive a license to sell alcoholic beverages." "Therefore, it is necessary for the City to form a non-profit public benefit corporation under the control of the City to lease the [REDACTED] restaurant from the City, and for such corporation to apply for a license to sell alcoholic beverages."

It appears that the primary purpose of your organization is to obtain the license to sell alcoholic beverages at the restaurant. The directors of the organization contracted with a taxable entity to operate the golf course and restaurant. Thus, the relationship between the organization and the government is more in the nature of a commercial contract for services as opposed to a lessening of governmental burden.

Based on the above statement, it appears that your organization does not meet the requirements of section 501(c)(3) as a charitable organization, because your organization does not meet the requirements that lessen the governmental burden. You are going to perform activities which the City can not: (1) State law prohibits the government (████████████████████) from holding a license to sell alcoholic beverages. If your organization is created to perform the prohibited activities, it is not entitled to exemption on a "lessening the burdens" basis; (2) The organization does not pay any of the government's expenses; and (3) The governmental unit has not previously engaged in the same activity prior to the organization taking over such activity.

CONCLUSION:

It is the position of Internal Revenue Service that your organization does not qualify for exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code. Accordingly, you are required to file income tax return on Form 1120 annually with your District Director.

If you are in agreement with this determination, we request that you sign and return the enclosed agreement, Form 6018.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the fact, law and any other information to support your position, as explained in the enclosed Publication 892. You will then be contacted to arrange for a hearing. The hearing may be held at the office of Regional Directors of Appeals, or if you request, at a mutually convenient District office.

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely matter, it will be considered by the Internal Revenue Service as failure to exhaust available administrative remedies and will then become our final determination. Section 7438(b)(2) of the Internal Revenue Code provides, in part, that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the

District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination becomes our final determination, the appropriate state officials of the [REDACTED] will be notified in accordance with section 6104(c) of the Internal Revenue Code.

If you have any questions, please contact the person whose name and telephone number are shown in heading of this letter.

Sincerely yours,

Steven T. Miller
Director, Exempt Organizations

Enclosures:
Form 6018
Publication 892
Notice 1214

Form **6018**
(Rev. August 1983)

Department of the Treasury-Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

Prepare in
Duplicate

Case Number

Employer Identification Number

Name and Address of Organization

Date of Latest Determination Letter

N/A

Date of Proposed Adverse Action Letter

I consent to the proposed adverse action relative to the above organization, as shown by the box(es) checked below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

- ☒ Denial of exemption Under Section 501(c)(3) as charitable Organization.
- ☐ Revocation of exemption, effective
- ☐ Modification of exempt status from section 501(c)() to 501(c)(), effective
- ☐ Classification as a private foundation (section 509(a)), effective
- ☐ Classification as a non-operating foundation (section 4942(j)(3)), effective
- ☐ Classification as an organization described in section 509(a)(), effective
- ☐ Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgment under section 7428.

(Signature instructions are on the back of this form.)

Name of Organization

Signature and Title

Date

Signature and Title

Date

Col. No. 430000

Form 6018 (Rev. 8-83)